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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

In re TERRY B., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRY B.,

Defendant and Appellant.

A096462

(Contra Costa County  
Super. Ct. No. J98-01662)

On appeal from an order committing him to the California Youth Authority, defendant Terry B. contends that the evidence was insufficient to support the findings that he committed a robbery and that he personally used a firearm. We affirm.

**Background**

On May 25, 2000, at about 9:50 p.m., appellant, aged 15, and another male robbed Gurbrinder Sandhu, the cashier at United Gas and Food in El Sobrante at gunpoint. The victim was watching television when the two robbers came into the store and told him to give them all of his money. Appellant entered the store first, was the shorter of the two, and had the gun. The victim gave them \$100 to \$150 from the cash register and they ran outside. The victim recognized appellant as someone who had robbed him three or four times before, each time using a different kind of gun.

Just before the robbery, Lawrence Hansen was driving by the United Gas and Food and noticed two young African-American men standing in the shadows. He

thought they were about to rob the store, so he made a U-turn and drove back. He saw them both pull on masks, or something to cover their faces, run into the store, and appear to rob it. The shorter man appeared to be pointing a gun. The taller one reached over and grabbed something. They ran from the store, pulled off their masks, and ran away. Hansen called the police on his cell phone. He tried to follow the robbers in his truck but lost sight of them.

A short while later about one-half mile from United Gas and Food, Hansen saw the robbers walking down the street. The taller man (codefendant) was in the lead and appellant was walking about 20 to 25 feet behind him. When Hansen saw appellant's face, which was gleaming as though he had been sweating, he recognized him as one of the robbers and called the police. He waited until he saw the police arrive and stop the two men; then he continued on his way.

Contra Costa County Deputy Sheriff Joseph Lueders was dispatched to the scene where he located, detained and arrested appellant and Joseph M. They were cooperative, but appellant gave a false name of Terence Lamar P., instead of his true name Terry Laverne B. Joseph M. had \$63 including eleven \$5 bills and eight \$1 bills, separated by denomination. Appellant had over \$100 in twenties, tens, fives, and ones, also separated by denomination.

The police contacted Mr. Hansen and brought him to the location of the arrests. He identified appellant by his appearance and clothing. He also identified appellant in court as the robber. Mr. Hansen was not able to "absolutely" identify the taller man at the scene, but Joseph M. was similar in size and appearance to the other robber. Mr. Hansen told officers and testified that the taller one must have discarded some clothing because both perpetrators had jackets when they robbed the store, but at the time of arrest his clothing seemed changed.

When police brought Mr. Sandhu to view the suspects he spontaneously identified them as the people who robbed him. He said he was absolutely certain because they were frequent customers of his store. At trial he identified appellant and his codefendant as the perpetrators.

The victim and Mr. Hansen gave varying descriptions of the robbers' attire. Immediately after the robbery the victim told deputy sheriff Souza that the shorter man with the gun was wearing a red knit mask or cap pulled down over his face, and the taller one (closer to the door, without a gun) was wearing a black cap and a white T-shirt with the collar pulled up to conceal the lower portion of his face. When the victim identified the perpetrators in the field he told police that the taller one, Joseph M., was the gunman.

At trial Mr. Sandhu testified that the shorter robber, who was five feet three or four inches, had the gun and was wearing a black mask, gloves, a hat, blue pants and a regular thin blue jacket with a hood covering his head. The taller man was five feet seven or eight inches and was wearing a red cap or T-shirt and a puffy jacket with white on the sleeves. He could not tell their race because their faces were covered. The victim said his testimony was influenced in part by the pictures and videotape of the robbery and that he had not paid much attention to the perpetrators' clothes.

Mr. Hansen testified the short man was wearing a big down jacket which was noticeable because it was not a cold night. The jacket was the same or similar to People's Exhibit No. 2. When Hansen saw appellant after the robbery, he was wearing the same jacket, and the taller man was wearing light pants. (Officer Souza testified Joseph M. was wearing very dark jeans when he was arrested.)

Mr. Hansen testified he clearly saw the outline of appellant's face and saw that he had a one-inch or shorter natural haircut and appeared to be 15 or 16 years old. Hansen saw only an outline of the other robber, who was taller and had a different style haircut. He thought the shorter man was five feet four to six inches and the other was five feet ten or eleven inches.

When deputy Lueders detained the two suspects neither had a gun, knit cap, gloves, red T-shirt or red hat. Appellant was wearing a black down jacket that looked like People's Exhibit No. 2, and black jeans. His hair was either shaved or had a small amount of growth. Appellant was five feet three inches tall, and Joseph M. was five feet eight inches. Both were 15 years old.

The day before, May 24, 2000, Joseph M. and an unidentified companion robbed Jamil Saleh of \$350 at the M & H Mini Market and Gas in El Sobrante. Joseph M., wearing a red knit cap, was the gunman who pointed a semiautomatic at Saleh. The second, shorter, perpetrator, whom Saleh was unable to identify, stayed in the doorway, served as a lookout, and gave instructions to Joseph. Saleh testified both men were African-American; one was about 16, the other between 13 and 15 years old.

Appellant's mother, Stephanie P., testified to activities of her son and his friend Joseph M. around her home on the evening in question. She thought appellant had money on him because she had given him about \$160 earlier in the week to buy shoes.

### **Discussion**

Appellant contends the evidence was insufficient to sustain the finding that he used a firearm or that he committed the robbery.

The standard of review in this proceeding is the same as that in a criminal case: viewing all of the evidence in a light most favorable to the juvenile court's findings, was there substantial evidence to support those findings? (*In re Roderick P.* (1972) 7 Cal.3d 801, 809; see generally (10 Witkin, Summary of Cal. Law (9th ed. 1989) Parent and Child, § 642(d).) We conclude that there was.

Appellant correctly asserts that the finding of firearm use under Penal Code section 12022.5 required personal, not vicarious use, by the juvenile. (*People v. Walker* (1976) 18 Cal.3d 232, 240-243.) He suggests that such use was disproved by "the uncontradicted testimony of the victim's identification of appellant as the person who did not have a gun." Appellant misstates the record. It is true that at one point deputy Souza testified that when he first brought the suspects to Mr. Sandhu for identification he identified appellant as the person who did not have a gun. However, the evidence is clear that appellant was the shorter of the two juveniles, and throughout his testimony, which we have summarized above, Mr. Sandhu clearly, consistently, and unambiguously stated that the shorter of the two robbers was the one who personally used the gun. Furthermore, he testified that he recognized the short gunman in this robbery as the same person who had robbed him three or four times before. Mr. Hansen consistently

identified the shorter of the two as the gunman. Also, the victim testified to a version of the showup in which he recognized appellant, the shorter of the two, as this same gunman. Deputy Souza's different understanding of that transaction may well be explained by a miscommunication. Souza testified that the victim was "quite upset over the incident, and his English worsened as a result of his being upset. And a lot of his sentences were just smatterings of poorly spoken English words. And then later as he calmed and settled down, his English improved." We conclude that there was substantial evidence supporting the trial court's finding that appellant personally used the firearm in this crime.

Similarly appellant's attack on the sufficiency of evidence of his identity must fail. While it is true that there are some ambiguities in the record, these may be explained by the victim's extreme agitation at the time of the crime and Mr. Hansen's annoyance at being summoned to the scene from the bathroom. Too, variations in the witnesses' description of the robbers' clothing are likely the result of the perpetrators discarding or altering their clothing between the time of the crime and their detention. Such variations do not undermine the trial court's findings because the victim and Mr. Hansen both unequivocally identified appellant as a perpetrator following the robbery and at trial. Finally, these identifications were corroborated by appellant falsely identifying himself to police, by the money he and his companion Joseph M. possessed, and by Joseph M. having committed a similar crime the night before.

The judgment (commitment to the California Youth Authority) is affirmed.

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Swager, J.

We concur:

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Marchiano, P. J.

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Stein, J.